

The issue is whether the Office abused its discretion in denying appellant's request for further merit review of his claim.

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated June 20, 2006, the Board affirmed June 8, 2005 and January 20, 2006 Office decisions denying appellant's claim for an injury on April 11, 2005. The facts and the law of the case in the Board's prior decision are incorporated herein by reference.

On October 25, 2006 appellant, through his attorney, requested reconsideration and submitted additional medical evidence. By decision dated June 1, 2007, the Office upheld the denial of appellant's claim for an injury on April 11, 2005.

On May 20, 2008 appellant, through his attorney, requested reconsideration and submitted an October 12, 2006 letter to a Dr. Natalie Mariano asking her to review an October 6, 2006 x-ray report. He suggested that the x-ray report confirmed her initial impression that appellant sustained a fractured rib in 2005. Appellant asked Dr. Mariano to provide a written opinion regarding causal relationship.²

By decision dated January 23, 2009, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.³

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act⁴ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁵ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).⁶

¹ See Docket No. 06-893 (issued June 20, 2006). On April 22, 2005 appellant, then a 71-year-old painter, filed a traumatic injury claim alleging that on April 11, 2005 he injured the right side of his upper torso when he moved a desk.

² The October 6, 2006 x-ray report and an October 17, 2006 letter from Dr. Mariano regarding the x-ray report were submitted to the Office prior to its June 1, 2007 merit decision.

³ Subsequent to the January 23, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Id.* at § 8128(a).

⁶ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁷ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

In his request for reconsideration of the Office's June 1, 2007 merit decision, appellant contended that the medical evidence was sufficient to establish that he sustained an injury on April 11, 2005 in the performance of duty. Lay individuals such as appellant are not competent to render a medical opinion.¹¹ Therefore, his opinion that the medical evidence establishes a work-related medical condition on April 11, 2005 is of no probative value. It does not constitute relevant and pertinent evidence not previously considered by the Office. The Office's June 1, 2007 decision denied appellant's claim because he failed to provide rationalized medical evidence establishing that he sustained a medical condition on April 11, 2005 causally related to his employment. Appellant did not submit evidence or argument that showed that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered or constituted relevant and pertinent new evidence not previously considered by the Office. Therefore, the Office properly denied his request for reconsideration.

On appeal, appellant argues that the Office erroneously failed to conduct a merit review of his claim in its January 23, 2009 decision. However, he did not meet any of the three criteria for obtaining further merit review of his claim. Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office. As noted, the issue in this case was the lack of rationalized medical evidence addressing causal relationship. Appellant did not submit such medical evidence with his request for reconsideration. Neither did he show that the Office erroneously applied or interpreted a specific point of law and or advance a relevant legal argument not previously considered by the Office. Therefore, the Office properly denied his request for further merit review of his claim.

⁷ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his or her] own motion or on application." 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608(b).

¹¹ See *Robert J. Krstyen*, 44 ECAB 227 (1992).

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for further merit review of his claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2009 is affirmed.

Issued: November 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board